MARRIAGE—COMMON-LAW MARRIAGE.—HEYMANN v. HEYMANN, 75 N. E. 1079 (ILL. SUP.).—*Held*, that it is sufficient to constitute a common law marriage if what is done and said evidences an intention by the parties to assume the marriage status, and the parties thereupon enter into the relation of husband and wife.

To make a valid contract of marriage it is essential that "the parties (1) were at the time of making it, willing to contract, (2) able to contract, and (3) mutually did contract in the proper forms and solemnities required by law." 1 Bl. Com. 439. By common law innumerable cases might be cited to show that no celebration is necessary. *Dumarsesly v. Fishly*, 3 A. K. Marsh (Ky.) 368. Nor by civil law. *Hallet v. Collins*, 10 How. (U. S.) 174. But in England, Mass., Md., and N. C., it has been held that celebration is necessary. *The Queen v. Millis*, 10 Cl. & F. 534; *Com. v. Munson*, 127 Mass. 459; *Denison v. Denison*, 35 Md. 361; *State v. Samuel*, 2 Dev. & B. (N. C.) 177; while the Supreme Court of the United States and most other states have held otherwise. *Meister v. Moore*, 96 U. S. 76. Even where statutory provisions exist regulating the form and celebration of marriage, it is commonly held that a marriage valid at common law, even though not solemnized in conformity with the requirements of statutes, will be held valid, unless statute positively declares it void. *Hargraves v. Thompson*, 31 Miss. 211; *Courtright v. Courtright*, (Com. Pl.) 11 Ohio Dec. 412. Where parties agree to take each other as husband and wife and do from then on live professedly in that relation, this constitutes a valid marriage. *Newton v. Southworth*, 7 N. Y. St. Rep. 130; *Overseers v. Overseers*, 2 Vt. 151. But some public recognition of it, such as living together as man and wife, is essential as evidence of its existence. *State v. Baldwin*, 112 U. S. 490. Sexual intercourse after agreement to marry is not of itself sufficient to consummate marriage. *Sharon v. Sharon*, 72 Cal. 633.

MUNICIPAL CORPORATIONS—TAXATION—SPECIAL ASSESSMENT NOT TAX.—ARNOLD ET AL. V. MAYOR, ETC., OF KNOXVILLE. 90 S. W. 469. (TENN.).—*Held*, assessments for benefits of improvement are not within a constitutional provision as to uniform taxation, such assessment not being regarded a tax. Nail and McAlister, JJ., *dissent* on the ground that, although authority in other states holds with the majority in this decision, nevertheless it is *stare decisis* to hold, in Tennessee, that a special assessment is a tax within the constitutional provision.

TRADE MARKS AND TRADE NAMES—COMBINATION OF PERSONAL AND GEOGRAPHICAL NAMES.—W. R. LYNN SHOE CO. V. AUBURN-LYNN SHOE CO., 62 ATL. 499 (ME.).—In the plaintiff's trademark geographical and personal names were both combined in an original device bearing the words, "Auburn-Lynn Shoes, Auburn, Maine." *Held*, that this arbitrary composite name of the plaintiff's product, with the location of the manufactory expressly added, undoubtedly constituted an impersonal trademark.

The unusual combination of geographical and personal names makes this case noteworthy and unique. As a general rule trade marks cannot consist of geographical names; *Evans v. Von Laer*, 32 Fed. 153; because their nature is such that they cannot point to the personal origin or ownership of the articles of trade to which they may be applied. *Castner v. Coffman*, 87 Fed. 457. But there is an exception where the adoption by the defendant is not so much to indicate the place of manufacture as to intrench upon the previous use and

popularity of another's trademark. *Lea v. Wolly*, 15 Abb. Practice N. S. (N. Y.) 5. And further where the geographical name, as applied to a certain article of commerce, has acquired a secondary meaning; *Seixo v. Provezende.* L. R. 1 Ch. 192; as where an injunction was issued against the defendant, restraining them from the use of the word Aberon as applied to cements *Newman v. Alvord*, 51 N. Y. 189, or for the use of personal names as trademarks. No man has the right to represent his goods as those of another of the same name, *Burgess v. Burgess*, 3 D. M. and G. 896; for while one is entitled to sell his own product under his own name, yet in doing so he must be careful not to do anything to injure another having the same name. *Walter Baker & Co., Ltd. v. Baker*, 77 Fed. 181. And if the plaintiff has first acquired a reputation for the particular kind of goods, the defendant may be enjoined from selling like goods, except in connection with a clear statement indicating that they are not the goods of the plaintiff. *Allegretti Chocolate Cream Co. v. Kellar*, 85 Fed. 643.

TRADE NAMES—ACQUISITION OF PROPERTY THEREIN—PROTECTION FROM INTERFERENCE.—COHEN V. NAGLE ET AL., 76 N. E. 276.—*Held*, that where a manufacturer of an article has acquired a right of property in a name applied to the article of manufacture, it is fraud on him for another to use the word in selling a similar article in such a way as to mislead the public.

In an early case it was held that while every trader has some particular device, there is no reason for granting an injunction to restrain one trader from using the same mark with another. *Blanchard v. Hill*, 2 Atk. 484. Beginning in 1783 with the case of *Singleton v. Bolton*, 3 Dong. 393 and in 1803, *Hogg v. Kirby*, 8 Ves. 215, there has been established the uniform fundamental principle of the right of protection to a trader in the use of his trade device. The principle of the court is two-fold. The public have the right to know goods of a manufacturer by his mark on them and he has a right to all benefits resulting from this knowledge. *Congress Spring Co. v. Rock S. C.*, 45 N. Y., 291. A name or mark may be valid as such and subject to exclusive use, even though since adoption it has become the common appellative of the article to which it is applied. *Celluloid Mfg. Co. v. Reid*, 47 Fed. 712. One may not use his own name in a manner intended to defraud the public. *Brown Chem. Co. v. Meyer*, 139 U. S. 540. In *El Models Cigar Mfg. Co. v. Gato*, 25 Fla. 886, the defendant in error used his own name E. H. Gato as a mark for his cigars, which the plaintiffs in error marked their cigars with the name of a junior member of the firm G. H. Gates. This was done to take advantage of former's reputation and was fraud.

TRIAL—INSTRUCTIONS—INVADING PROVINCE OF JURY — CREDIBILITY OF WITNESSES.—CHICAGO UNION TRACTION CO. V. O'BRIEN, 76 N. E. 341. (ILL.).—*Held*, that there is no presumption of law that an unimpeached witness has testified truly, and an instruction to that effect is erroneous, as infringing on the province of the jury.

It is not an error of law for the court, in its charge, in commenting upon the testimony of a witness, to express an opinion as to his honesty. *Hoffman v. N. Y. Cent. & Hud. Riv. R. R. Co.*, 87 N. Y. 25. Moreover, the court may instruct the jury as to the rules of evidence. *Lampe v. Kennedy*, 60 Wis. 110. But the credibility of witnesses and the effect of the testimony given are matters coming within the exclusive province of the jury. *Holloway v. Com.*, 74 Ky. (11 Bush) 344. And so it is error for the court, in its